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1 IN THE UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----

4 In re: REFCO INC. SECURITIES: 07-MDL-1902(GEL)
5 LITIGATION

6 KENNETH M. KRYS and : 08-Ci v. 07416(GEL)
7 CHRISTOPHER STRIDE, as JOINT: :
8 OFFICIAL LIQUIDATORS of :
9 SPHINX LTD., et al, :
10 Plaintiff s :
11 -against- :
12 ROBERT AARON, et al., :
13 Defendants :
14 -----
15 Friday, July 8, 2011
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0002 13 In-camera proceeding held before SPECIAL MASTER
14 RONALD J. HEDGES, ESQUIRE, at the offices of DLA
15 PIPER, 300 Campus Drive, Suite 100, Florham Park,
16 New Jersey, commencing at 10:13 a.m., on the above
17 date, before Mickey Dinter, Registered Professional
18 Reporter, Certified Court Reporter and Notary Public
19 for the State of New Jersey.

1 MR. HEDGES: Good morning.
2 This is Special Master Hedges. I'm
3 conducting, without any counsel present,
4 an in camera review of documents
5 submitted to me in Krys v. Sugrue by Mr.
6 Christopher Deubert of the Ginsberg &
7 Burgos firm by letter dated May 5, 2001.
8 This in camera is further
9 being conducted pursuant to my Orders on
10 discovery disputes dated March 24 and
11 April 27, 2011, in which the latter
12 includes my notation that any production
13 shall be subject to an existing Federal
14 Rule of Evidence 502(d) Order.

15 I have before me, the
16 declaration of Mr. Ginsberg in opposition
17 to defendants, Mark Kavanaugh and Brian
18 Owens', Motion to Compel the production
19 of documents.

20 First, let me apologize to
21 counsel. We had planned to do this in
22 camera on the date of a conference with
23 Judge Rakoff. There was, obviously,
24 some miscommunication between us. I was
25 sitting in one room and counsel were

0003 1 sitting in another room, which is why we
2 are doing it here today. Let me begin

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3 Looking at documents.

4 I have redacted and unredacted
 5 copies of every document, most or all of
 6 which are e-mail chains. As I go through
 7 the documents, I will refer to the first
 8 e-mail in a given document as the parent,
 9 later e-mails will be called children or
 10 a child; and the last e-mail will be the
 11 last child or the final child e-mail. I
 12 will attempt to keep those conventions
 13 as we go through.

14 First document, CM00000842
 15 through 847. I'm going to begin looking
 16 at the documents now. There are several
 17 redactions in this document. The first
 18 is on Page 844; the redactions continue
 19 through 842 to the ultimate child e-mail.
 20 The redactions on pages 842 and the first
 21 redaction on Page 843 pertain to health
 22 issues. These are irrelevant and need
 23 not be provided.

24 On Page 843, 844; and this
 25 is beginning on Page 843, with an e-mail

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 1 from Mr. Ginsberg to PKF dated June 21,
 2 at 12:27 p.m. I'm not prepared to say
 3 that the redaction on Page 844, Ginsberg
 4 to PKF, dated June 21, 2006, at 10:56 a.m.
 5 is irrelevant. It appears to be relevant.
 6 It relates to prior communications; and
 7 I see nothing including the provision of
 8 any legal advice. I will order the e-
 9 mail, June 21, 2006, 10:56 a.m., to be
 10 turned over unredacted.

11 That leaves e-mails on Page
 12 843. The first redaction, PKF to
 13 Ginsberg, June 21 at 12:59 p.m., is
 14 irrelevant, need not be produced. The
 15 second two e-mails on Page 843 from
 16 Ginsberg to PKF dated June 21 at 12:27
 17 p.m., is protected by privilege and need
 18 not be produced; the second dated
 19 June 21 from PKF to Mr. Ginsberg is also
 20 subject to privilege and need not be
 21 produced. So, pages 842 through 847,
 22 the only e-mail that should be turned
 23 over is from Mr. Ginsberg to PKF dated
 24 June 21 at 10:56 appearing on Page 844.

25 Next document, CM848 through

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 1 852; redactions are on pages 848 and 849.
 2 These redactions appear in the first set
 3 of documents that I reviewed. My rulings
 4 are the same. The production or non-
 5 production in the first set of documents
 6 will apply to this document as these are
 7 repeats.

8 Next, CM853 through 862,
 9 redactions appearing on pages 853 through
 10 857. Redactions on page 854 include, as
 11 the first redaction, a footer from Mr.
 12 Feighery that gives a fax number and e-
 13 mail address and a statement of

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14 confidentialty. There's nothing
 15 privileged about that. On the other hand,
 16 it's irrelevant and need not be produced.
 17 The second redaction on page 854 appeared
 18 in the first set of documents I reviewed,
 19 as do the redactions on page 855 and
 20 856. The only "original" document to be
 21 redacted is the ultimate child e-mail,
 22 which appears on page 853. There are two
 23 e-mails on this pages; the first is from
 24 Mr. Feighery to Patricia Peter and to
 25 Andrew Feighery, "June Invoices-Sphinx

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1 Board Information." This is the re-
 2 cording of a communication between Mr.
 3 Feighery about a Plus Funds call. I see
 4 nothing here that is privileged and it
 5 appears to be relevant. I will order on
 6 page 853 the second e-mail, Feighery,
 7 June 21, at 1:37 p.m., to be turned over.
 8 The ultimate child e-mail on page 853 is
 9 from PKF to Feighery; that appears to be
 10 subject to the attorney/client privilege,
 11 if not work product protection, and I
 12 will order that that redaction be sus-
 13 tained.

14 Next, we have documents CM863
 15 through 873; redactions begin on page 869.
 16 The redaction on page 869, again, is
 17 irrelevant. It simply has an address,
 18 Carnegie Hall Tower, with an e-mail
 19 address mailed to Robert Malchman at
 20 Plusfunds.com. I don't see anything
 21 relevant in that. I will sustain that
 22 redaction.

23 The redactions on page 868
 24 repeat redactions, repeat e-mails, from
 25 the first document I looked at. My prior

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1 ruling stands as to that.

2 On page 867, there are two
 3 redactions; page 866, there are two
 4 redactions; page 865, the redactions on
 5 the top of the page, again, is footer
 6 information, including Mr. Feighery's
 7 address in Ireland and the like, and a
 8 statement of confidentiality. Those are
 9 irrelevant. I will not require that to
 10 be produced. The second redaction,
 11 again, is a copy of an e-mail I looked
 12 at in the first set. My prior ruling
 13 applies.

14 On page 864, the bottom e-
 15 mail, June 21 at 1:37, is from Mr.
 16 Feighery. I ruled on this before. This
 17 is a record of a conversation he had on
 18 the Plus Funds call. That's to be
 19 produced.

20 The top e-mail on page 864 is
 21 a response from Mr. Ginsberg to Mr.
 22 Feighery. Mr. Ginsberg is making a
 23 request of information from Mr. Feighery.
 24 I see no communication that implicates

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25 attorney/client privilege. I will order
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1 that to be turned over. So, the
 2 redactions on page 864 are to be removed
 3 and the entire document turned over.

4 On page 863, again, the entire
 5 bottom of the page is Mr. Feighery's
 6 footer. It's not privileged, but it's not
 7 relevant. It doesn't have to be turned
 8 over. The ultimate child e-mail on the
 9 top of page 863, I see no communication
 10 for the purpose of securing legal advice.
 11 I will order the entire page, 863, to be
 12 unredacted and turned over.

13 Next set of documents, pages
 14 874 through 882; redactions begin on
 15 page 874 and continue through 878. These
 16 repeat e-mails in the first documents,
 17 the first set of documents, I looked at.
 18 They are duplicative and need not be
 19 turned over. My prior rulings apply.

20 Next pages, 883 through 887.
 21 Again, these pages repeat e-mails that
 22 were contained in the first set of
 23 documents I looked at. My rulings as to
 24 the first set of documents apply. This
 25 latest set need not be turned over. It

0009 would be duplicative.

1 The next pages, 888 through
 2 891. The redactions appear on page 888.
 3 Again, these are duplicative of the first
 4 set of documents I looked at. These need
 5 not be turned over. My rulings as to the
 6 first set will govern these pages.

7 The remaining documents I
 8 must review, appear from Mr. Ginsberg's
 9 affidavit to simply not have been
 10 provided to counsel on the grounds that
 11 the entire content of the e-mail chains
 12 are privileged. I will review each of
 13 these documents separately.

14 Pages 892 through 899, these
 15 documents plainly pertain, or e-mail,
 16 plainly pertain to legal advice. Other
 17 than a number of e-mail which simply
 18 speak about times for calls and the like,
 19 those are irrelevant. This information
 20 is either irrelevant or privileged and
 21 none of these pages, 892 through 899,
 22 need be turned over.

23 Pages 900 through 906, with
 24 the exception of irrelevant e-mail which

0010 appear on pages 900 and the top of page
 1 901, pages 900 through 906 repeat pages
 2 892 through 899. I have already con-
 3 cluded that the first set of documents,
 4 these contain either irrelevant infor-
 5 mation or privileged information. My
 6 rulings as to 892 through 899 will control
 7 as to anything subject to privilege. The
 8 remainder is irrelevant and merely for

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10 the purpose of scheduling calls and the
 11 like, need not be produced. I will
 12 sustain the entire redaction.
 13 Pages 905, 906, Mr. Ginsberg's
 14 declaration at page 8 states in paragraph
 15 32 that these documents were produced on
 16 or about November 29, 2010. Counsel can
 17 confer if the documents were in fact not
 18 produced. Mr. Ginsberg should make
 19 these available.

20 Pages 907 through 912 are
 21 repeats of pages 892 through 899. My
 22 rulings as to the first, that first set
 23 of documents, apply to pages 907 through
 24 912. These need not be produced.

25 Pages 916 through 921, 922

0011 1 through 925, again, are included within
 2 the first set of documents, pages 892 on.
 3 My rulings apply. These documents are
 4 either irrelevant or privileged.

5 Pages 927 through 929 also
 6 appear in the documents beginning on
 7 page 892. The contents are either
 8 irrelevant or privileged. 927 through
 9 929 need not be produced. Same rulings
 10 as to pages 930, 931; same rulings as to
 11 pages 932, 933.

12 Page 1255 through 1263 are a
 13 different set of e-mails. I'm satisfied
 14 that pages 1255 through 1263 contain
 15 either irrelevant information, such as
 16 headers or footers, although the footers,
 17 they are irrelevant, there's nothing to
 18 do with them.

19 The content of the e-mail on
 20 these pages plainly reflect requests for
 21 or giving of legal advice. These docu-
 22 ments need not be turned over. I will
 23 sustain the non-production. That's 1255
 24 through 1263.

25 Pages 1264 through 1271, as

0012 1 stated in Mr. Ginsberg's declaration, are
 2 a subset of pages 1255 through 1263. My
 3 prior rulings apply. I will sustain the
 4 non-production.

5 I can't find pages 1272 and
 6 1273. These are reflected in paragraph
 7 41 of Mr. Ginsberg's declaration. They
 8 may be in the pile. If not, counsel will
 9 either have to resolve this among them-
 10 selves or get me those two pages to look
 11 at.

12 Pages 1274 through 1277 are
 13 a subset of pages 1255 through 1263. My
 14 prior rulings apply.

15 Page 9489 is a set of docu-
 16 ments pertaining to Mr. Jon Knight,
 17 identified as a consultant. Based on
 18 Mr. Ginsberg's declaration at paragraphs
 19 43 through 53, I am satisfied that the
 20 information contained in these pages,

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21 consistent with the paragraphs of Mr.
 22 Ginsberg's declaration, either contain
 23 information which is irrelevant, such as
 24 headers or footers or information subject
 25 to work product, and I will sustain the
 0013

1 non-production of pages 9489 through
 2 9555. I will also note that a number of
 3 these pages contain e-mail which are
 4 duplicative.

5 Next pages, 372 and 373.
 6 These are addressed in paragraph 54 of
 7 Mr. Ginsberg's declaration. Consistent
 8 with Mr. Ginsberg's declaration, it
 9 appears that the information contained in
 10 pages 372 and 373 are irrelevant, need
 11 not be produced.

12 I see nothing in page 397 that
 13 is relevant. It need not be produced.

14 Page 668, this page contains
 15 irrelevant information and need not be
 16 produced.

17 Page 10915 and 916, consistent
 18 with Mr. Ginsberg's declarations and my
 19 review of the documents as I have re-
 20 viewed all other documents this morning,
 21 I find nothing on pages 10915 or 916 that
 22 are relevant. These need not be produced.

23 Page 10951, I find nothing in
 24 this document that is relevant. It need
 25 not be produced.

0014 1 I have pages 10977 and 978 in
 2 front of me. These are identified in
 3 paragraph 59 of Mr. Ginsberg's
 4 declaration. I see nothing in these two
 5 pages that is relevant. They need not
 6 be produced.

7 Pages 10979 through 10981,
 8 these documents are a repeat of pages
 9 10977 and 978 with an additional e-mail
 10 on the top of page 10979. Again, I see
 11 nothing relevant. These need not be
 12 produced.

13 Pages 1082 through 1085,
 14 again, these are reflective of pages
 15 10977, 978, 979 and through 981. Some
 16 are duplicative. In any event, the in-
 17 formation contained therein is irrelevant.
 18 None of these documents need be produced.

19 Pages 986 through 988, I see
 20 nothing relevant in these pages. These
 21 need not be produced.

22 Pages 1090 through 1095,
 23 again, with one or two exceptions of
 24 child e-mails, these repeat prior pages.
 25 Nothing is relevant. These documents

0015 1 need not be produced.

2 Last, pages 11106 through
 3 11108, these documents are irrelevant and
 4 need not be produced.

5 For the record, I appear to

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6 be missing pages 1272 and 1273. Unless
7 counsel can work some stipulation out
8 with regard to those pages, Mr. Ginsberg
9 should send them to me so I can review
10 these.

11 Many of the e-mail chains that
12 I have looked at this morning are
13 duplicative of prior e-mail. I fail to
14 see why counsel could not have worked
15 some resolution out of that rather than
16 having me look at everything multiple
17 occasions. Nonetheless, I have ruled
18 that some pages are relevant and should
19 be produced. The majority of the pages,
20 however, contain either irrelevant in-
21 formation or information subject to
22 attorney/client and/or work product
23 privileges.

24 Mr. Ginsberg is directed to
25 prepare a form of order describing what

0016 pages should and should not be produced
1 and to share that with counsel, along
2 with the transcript. Thank you.

3 (Proceeding concluded, 11:07 a.m.)

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0017 1 CERTIFICATION
2

3 I hereby certify that the
4 proceedings in the foregoing matter are
5 contained fully and accurately in the
6 stenographic notes taken by me, and that the
7 copy is a true and correct transcript of the
8 same.

9
10 MICKEY DINTER
11 Registered Professional Reporter
12 Certified Court Reporter XI 00119 New Jersey

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